IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

Smt. Kalpana Mehta Vs. Saraswati Punyarth Trust & ors.

S.B. CIVIL FIRST APPEAL No.667/2006 against the judgment & decree dated dated 5.8.2006 passed by the ADJ (FT)No.8, Jaipur city, Jaipur in Civil Suit No.1/2006.

Date of Judgment :: April 25, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. G.P. Sharma for the plaintiff-appellant.
Mr. G. Bardar for the defendant-respondents.

BY THE COURT:

1. This appeal is directed against the order dated 5.8.2006 passed in Civil Suit No.1/2006 by the learned ADJ (Fast Tract) No.8, Jaipur City, Jaipur whereby the learned trial court allowed the application of defendant Nos.1 & 2 under Order 7 Rule 11 CPC and rejected the suit.

2. Learned counsel for the appellant plaintiff submitted that the suit was filed for declaration seeking ownership rights over the plot of land which was allotted to her by defendant Nos.1 & 2 and, therefore, merely because JDA Tribunal had decided a case against the defendant No.8 Anand Bhawan Nirman Sahkari Samiti, a co-operative society which was issued Pattas by the JDA (Jaipur Development Authority) which was challenged before the JDA Tribunal and the same was decided against the said society, the suit filed by the present plaintiff could not have been dismissed under Order 7 Rule 11 CPC

as the suit was neither barred by any provision of law nor it could be said that the plaint did not disclose any cause of action.

3. Countering these submissions, Mr. G. Bardar, learned counsel for the appearing for the defendant applicants submitted that this Court in **Anand Bhawan Nirman Sahkari Samiti Ltd. Vs. Swaroopa @ Ram Swaroop** has held while deciding S.B. Civil Revision Petition No.64/1989 on 17.10.1989 that no member can be allotted any land under the rules as the society is neither lease holder nor free holder of the land and the court further held that the society had no locus standi to file a suit in such matters and represent the cause of persons who are not getting any benefit under the co-operative law and who do not get any right under the co-operative law. ***If there is any individual right they can file the suit and the observation made in disposing of this revision petition will not prejudice their case.*** Learned counsel for the respondents further relied upon the judgment of this Court in **Tagore Nagar Vikas Samiti & ors. Vs. Bodhu Ram & ors.** (S.B. Civil Misc. Appeal No.2578/2006), decided on 4.4.2007 arising out of dismissal of the application for temporary injunction under Order 39 Rule 1 & 2 CPC wherein the Court observed referring to the aforesaid earlier judgment dated 17.10.1989 that the right of the Housing Society to sell the plots to its members was not challenged and it had achieved finality. Therefore, the Court held that the suit for specific performance which was dismissed by the civil court and was never challenged concludes that prima facie the case lies in favour of the Trust and not in favour of the appellants.

4. Having considered the rival submissions and upon perusal of the cited case laws, this Court is of the opinion that there is no force in the submissions of the learned counsel for the respondents and the reliance

placed on the aforesaid judgments for supporting the application under Order 7 Rule 11 CPC is misconceived. In the later judgment, this Court was only concerned with temporary injunction under Order 39 Rule 1 CPC and, therefore, while dealing with the parameters relating to grant of temporary injunction came to the conclusion that it was the Trust which held the title and possession over the land in question and not the appellant. Similarly, the earlier judgment of 1989 also clearly saved the individual rights of the allottees by way of filing the suits, therefore, the said judgment would rather support the case of the appellant plaintiff in the present case rather than that of the respondent defendants.

5. Once the suit was filed claiming declaration over the plot of land which was allotted by the defendant society, such civil rights had to be decided by a full dress trial of the suit and it could not be said that the plaint did not disclose any cause of action. Nor the bar of Section 99 of JDA Act would apply in the present case because the present appellant was not a party to that litigation before the JDA Tribunal which was between the defendant No.8 and the JDA. Therefore, that cannot become a ground for rejecting the suit.

6. Consequently, the present appeal deserves to be allowed and the impugned order dated 5.8.2006 deserves to be set aside. The appeal is accordingly allowed and the aforesaid order dated 5.8.2006 is set aside and the Civil Suit No.1/2006 is restored to the learned trial court for trial in accordance with law. No order as to costs.

(Dr.VINEET KOTHARI),J.

VS/